

AGENCY FOR INTERNATIONAL DEVELOPMENT
PPC/CDIE/DI REPORT PROCESSING FORM

1. Project/Subproject Number: Task order 827	2. Contract/Grant # N PCE-I-00-98-00016-00	3. Publication Date: 30 April, 2003
4. Document Title/Translated Title: Drawing from Other Countries' Experiences in Preparing for FTA Negotiations with the United States		
5. Author (s) Assistance for Trade Reform		
6. Contributing Organization (s) Assistance for Trade Reform		
7. Pagination 11	8. Report Number 1	9. Sponsoring A.I.D. Office Cairo
<p>10. Abstract</p> <p>The Report draws on lessons from FTAs negotiated or under negotiation with NAFTA, Jordan, Chile, Singapore, and five Central American countries. Among the most important lessons were: Jordan, Morocco, Singapore, Chile, and the Central American countries significantly reduced their most favored nation (MFN) tariffs before beginning FTA negotiations with the United States.</p> <ol style="list-style-type: none"> 1. An FTA locks in economic policy reforms and fosters domestic economic efficiency through competition with foreign suppliers. The FTA's binding dispute settlement enforces obligations. 2. FTA partners have reformed customs administration, protection of intellectual property rights (IPR), government procurement practices, and regulatory transparency. 3. The long-term objective of U.S. FTA partners to attract foreign investment can only be realized if economic policies facilitate investment. Red tape and expensive regulatory hurdles discourage investors and erode their anticipated return. Most U.S. FTA partners have undertaken significant policy reforms to facilitate investment, well in advance of FTA negotiations. 4. Open markets increase competition for domestic producers, who, over time become more efficient and productive. In the meantime, policy reforms such as privatization policies, elimination of price controls, and a proactive competition policy can minimize dislocations. 5. The United States' FTAs have introduced and required unique trade policy actions. For example the NAFTA, Chile, and Singapore agreements incorporate a "negative list" of service sectors exempt from general market-opening principles, rather than WTO's "positive list," of services subject to market-opening principles. 6. The most important pre-negotiation policy reform components have been: Market access, WTO Compliance, Custom, IPR, Government Procurement, Regulatory Transparency, Investment, Privatization, Price Controls, Competition Policy, Rural Development, . Labor and Environment. 		
11. Subject Keywords		
12. Supplementary Notes		
13. Submitting Official Timothy Buehrer	14. Telephone Number 20 – 2 – 2040988	15. Today's Date: 11-March 2005

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16. DOCID	17. Document Disposition
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AID 590-7 (10/88)

This report was prepared through support provided by the U.S. Agency for International Development, under the terms of Contract No.PCE-I-00-98-00016-00 Task Order 827. The opinions expressed herein are those of the author(s) and do not necessarily reflect the views of the U.S. Agency for International Development

Drawing from Other Countries' Experiences in Preparing for FTA Negotiations with the United States

Abstract

The Report draws on lessons from FTAs negotiated or under negotiation with NAFTA, Jordan, Chile, Singapore, and five Central American countries. Among the most important lessons were:

7. Jordan, Morocco, Singapore, Chile, and the Central American countries significantly reduced their most favored nation (MFN) tariffs before beginning FTA negotiations with the United States.
8. An FTA locks in economic policy reforms and fosters domestic economic efficiency through competition with foreign suppliers. The FTA's binding dispute settlement enforces obligations.
9. FTA partners have reformed customs administration, protection of intellectual property rights (IPR), government procurement practices, and regulatory transparency.
10. The long-term objective of U.S. FTA partners to attract foreign investment can only be realized if economic policies facilitate investment. Red tape and expensive regulatory hurdles discourage investors and erode their anticipated return. Most U.S. FTA partners have undertaken significant policy reforms to facilitate investment, well in advance of FTA negotiations.
11. Open markets increase competition for domestic producers, who, over time become more efficient and productive. In the meantime, policy reforms such as privatization policies, elimination of price controls, and a proactive competition policy can minimize dislocations.
12. The United States' FTAs have introduced and required unique trade policy actions. For example the NAFTA, Chile, and Singapore agreements incorporate a "negative list" of service sectors exempt from general market-opening principles, rather than WTO's "positive list," of services subject to market-opening principles.
13. The most important pre-negotiation policy reform components have been:

- **Market access.** Jordan, Morocco, Singapore, Chile, and the Central American countries significantly reduced their MFN tariffs before beginning FTA negotiations with the United States. Jordan and Morocco eliminated most taxes and fees on imports as well.
- **WTO Compliance.** Jordan's accession to the WTO preceded its FTA with the United States. Its vigorous implementation of WTO obligations is a critical sign of its commitment to reform.
- **Customs.** Morocco has reduced its customs clearance from two weeks to two days. It has invested heavily in equipment, computerization, and human resources. Jordan is rigorously applying WTO rules on customs valuation.
- **IPR.** Beside implementation of the WTO TRIPS agreement, Jordan, Morocco, and other countries have worked with the United States on more difficult enforcement issues, in some cases setting up a special prosecutor's office dedicated to combating piracy.
- **Government Procurement.** Morocco overhauled its procurement practices to emphasize transparency, accountability, and competition, including public bid-opening sessions, substantially narrowing the scope of restricted bidding or sole sourcing, extending the period of bid submissions, and providing for mandatory special controls and audits for contracts valued over \$500,000.

- **Regulatory Transparency.** As part of its WTO accession, Jordan introduced transparency measures in all its economic reform programs. Morocco has an aggressive program to implement and transparently certify ISO standards. Morocco has the most autonomous telecommunications regulator in the Middle East and Africa.
- **Investment.** Bureaucratic red tape can undercut the incentives of duty-free access to the U.S. market. Morocco established a special court system to handle commercial disputes and established a one-stop investment program. Jordan and Moroccan currencies are convertible with no restrictions on repatriation of profits or proceeds from sales of investments.
- **Privatization.** Countries that entered FTAs with the United States had implemented aggressive privatization programs. In Jordan, foreign companies now manage (with varying ownership shares) Jordan's telecommunications company, its cement factories, rail lines and an energy generation facility. Morocco's extensive privatization process included such critical sectors as telecommunications, energy, and utilities.
- **Price Controls.** Jordan, Morocco, and Chile no longer administer prices, with a few exceptions such as food staples in Morocco and some utilities in Chile.
- **Competition Policy.** Chile has a rigorous competition policy to promote economic efficiency and consumer welfare. In addition, the U.S.–Singapore FTA requires that Singapore enact a law regulating anticompetitive business conduct and to create a competition commission by 2005.
- **Rural Development.** To minimize dislocations in rural areas following NAFTA, Mexico embarked on a rural development program that included land reform, income support in place of production incentives, and training programs to help the rural economy produce more efficiently.
- **Labor and Environment.** Most U.S. FTA partners already had regimes strongly protecting workers' rights and safety and the environment. Before NAFTA Mexico had excellent laws and regulations protecting workers and the environment, though enforcement was often poor. Labor law reform is high priority of the new Moroccan administration, and Morocco is addressing the problem of child labor.

FINAL REPORT

Drawing from Other Countries' Experiences in Preparing for FTA Negotiations with the United States



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USAID/Cairo

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UNDER CONTRACT NO.
PCE-I-00-98-00016
Task Order 827

April 2004

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Drawing from Other Countries' Experiences in Preparing for FTA Negotiations with the United States

Since 2001 the United States has implemented a Free Trade Agreement (FTA) with Jordan, finished negotiating FTAs with Chile and Singapore, started negotiations with Morocco and five Central American countries, and resumed Trade and Investment Framework Agreement (TIFA) discussions with Egypt. Jordan, Morocco, Chile, and Singapore have led their regions in economic policy reform while the Central American countries have taken major steps in recent years. In his October 1, 2002, notification to Congress of the President's intention to enter into negotiations with Morocco, Ambassador Zoellick stressed that a U.S.-Morocco FTA will support the economic and political reforms already underway in Morocco. In this policy brief we describe policy reforms undertaken by several countries, particularly Jordan and Morocco, before they began negotiating an FTA with the United States. Policymakers in Egypt may be able to draw upon these experiences for their TIFA discussions with the United States.

Market Access as a Form of Down Payment

Improved market access is a primary goal of any FTA. U.S. tariff barriers are generally quite low for goods of non-industrialized countries, which benefit from Generalized System of Preferences (GSP) and other preferential trade arrangements. (Textiles and apparel are important exceptions.)

U.S. goods, though, often face high tariffs and daunting licensing requirements, especially in developing country markets. The U.S. Congress noted this disparity in the Trade Promotion Authority Act it passed in November 2002. Because the disparity could disadvantage U.S. negotiators seeking reciprocal access, Congress required the Administration to undertake additional and specific consultations with Congress before beginning FTA negotiations with countries whose textile and agricultural tariffs are higher than those of the United States.

Jordan, Morocco, Singapore, Chile, and the Central American countries significantly reduced their most favored nation (MFN) tariffs before beginning FTA negotiations with the United States. Singapore had eliminated all tariffs; Chile has reduced its MFN tariffs annually to an across-the-board 6 percent in 2003 and eliminated its pro forma licensing requirement. (In both cases reduction commitments were made unilaterally and not as a precondition of FTA negotiations). Top Central American tariffs are 15 percent, with most lower.

As of March 2000 Jordan lowered the ceiling on all duties to 30 percent, with a 10 percent ceiling on duties on materials used as industrial inputs, and abolished most supplementary import taxes and fees. Jordan also dramatically decreased its use of import licenses and liberalized restrictions on importers and on distributors of imported goods.

Morocco cut tariffs from historically high levels and eliminated virtually all quantitative restrictions. Morocco's MFN tariff is still relatively high (on average about 35 percent) and contains some significant spikes for agricultural imports. In recent years Morocco has eliminated its 15 percent import tax and simplified or eliminated most licensing requirements. The European Union is Morocco's major supplier, and Morocco's Association Agreement with the European Union represents real and significant market access liberalization. The agreement, which entered into force in March 2000, calls for dismantling customs tariffs on industrial goods over a 12-year period. Tariffs on machinery and equipment are immediately zero; tariffs on industrial inputs phase out over 4 years; tariffs on all other covered goods phase out over 10 years starting in

2003. Morocco is not a major market for U.S. exporters, but the Association Agreement puts U.S. exporters at a disadvantage to their European competitors.

Locking in Reforms as a Sign of Commitment

The United States and its partners have objectives beyond market access. They see that an FTA locks in economic policy reforms and fosters domestic economic efficiency through competition with foreign suppliers. The FTA's binding dispute settlement enforces obligations.

Implementing trade agreement commitments often contributes to reform but cannot be the only motivation for it. U.S. administrations have held that policy reforms must first be underway, at a minimum through vigorous implementation of WTO commitments. Then an FTA can reinvigorate, boost, and lock in reforms. In entering its first comprehensive FTA with Canada in 1989 the United States aimed to capitalize on and promote reforms in Canada's investment regime and energy policies. With the North American Free Trade Agreement (NAFTA), the United States sought to boost the economic policy initiatives of President Salinas to open markets and to privatize the economy. Both these agreements introduced binding dispute settlement before it was adopted multilaterally during the Uruguay Round negotiations.

Important trade policy reforms that the United States' potential FTA partners have taken include customs administration, protection of intellectual property rights (IPR), government procurement practices, and regulatory transparency.

- **Customs Administration.** Jordan introduced a new customs law in 1999 and amended it in 2000 to include WTO-consistent criteria for customs valuation and to ensure that customs user fees reflect the cost of services rendered. As part of its overall reform policies, Morocco has taken significant steps to streamline its customs service. It has increased the use of computerization to manage critical information on movement of goods, processing declarations, assessing tariffs, and collections. It has built inland facilities to ease port congestion. It has upgraded staff skills with on-the-job training and short courses. U.S. firms confirm that Morocco has reduced customs clearance times from two weeks to two days or less. An up-and-running modern, efficient customs service is all the more important for the latest generation of U.S. FTAs. The Singapore and Chile agreements contain obligations far beyond WTO commitments, reflecting the 1999 World Customs Organization revisions of the 1973 Kyoto Convention. For example, these agreements will require customs services to publish laws and regulations on the Internet and to provide binding rulings on request of traders.
- **IPR Protections.** Vigorous IPR protection is a preoccupation of U.S. industry and a Congressionally mandated objective of any U.S. trade negotiation. Because all U.S. FTAs build on solid implementation of WTO TRIPS commitments and adherence to other IPR-related international agreements, potential partners must be TRIPS-compliant. Jordan and Morocco have upgraded their laws in recent years and neither appears on USTR's Special 301 watchlist. In fact, Jordan has taken steps to address data exclusivity of pharmaceutical patent applications. Effective enforcement mechanisms and legal procedures are often lacking. Jordan, Morocco, and the Central American countries recognize shortcomings and have worked effectively with U.S. assistance agencies to address these problems. Assistance has included IPR enforcement training to police authorities and judges and, in some instances, setting up a special prosecutor's office dedicated exclusively to combating piracy. The Chile and Singapore agreements have set new

benchmarks for IPR protection addressing new technologies and, for example, streamlining the trademark filing process to allow applicants to use their own national patent/trademark office for filing applications. The latter requires administrative sophistication and efficiency similar to U.S. practices.

- ***Government Procurement Practices.*** All FTAs include disciplines on government procurement even though few FTA partners belong to the WTO Government Procurement Agreement. Consequently, the United States looks carefully at existing procurement practices in judging a partner's ability to adopt binding obligations on procurement. In 1999, Morocco introduced a new procurement decree to overhaul its procurement practices. The new system enhances transparency, accountability, and competition. The decree mandates public bid-opening sessions, substantially narrows the scope of restricted bidding or sole sourcing, extends the period of bid submissions, and provides for mandatory special controls and audits for contracts valued over \$500,000. In addition, Morocco has participated in the WTO working group on transparency and is a keen supporter of U.S. positions there. U.S. FTAs contain a specific list of procurement exceptions and otherwise require non-discriminatory treatment for U.S. goods and services providers at national and local levels of government procurement. Consequently, a broad spectrum of government officials must be familiar with procurement rules and practices. Morocco and several Central American countries have provided extensive training, often with the support of U.S. assistance agencies.
- ***Regulatory Transparency.*** Jordan acceded to the WTO in 2000. As part of its economic reform programs and in response to WTO requirements, Jordan introduced new measures to ensure regulatory transparency, including privatization procedures. Transparency has also been important in Morocco's reforms of procurement and privatization policies. Liberalization of the foreign exchange allocation system, the import regime, and the financial sector has reduced the government's role in the economy. Morocco has relied on transparency to fight corruption, working with civil society and business organizations and international organizations and donors. Morocco has an aggressive program to implement and transparently certify ISO standards. It has taken major steps to modernize regulation of telecommunications, creating an independent regulatory regime and introducing competition into all telecommunications services. In fact, the Economist Intelligence Unit ranks Morocco's telecommunications regulator as the most autonomous in the Middle East and Africa. And Morocco's overall regulatory structure was ranked second best in the Middle East and Africa. El Salvador has led Central America in regulatory reform, especially of telecommunications services.

Helping the FTA Pay Off by Improving the Investment Climate

A long-term objective of U.S. FTA partners is to attract foreign investment. Duty-free access to the U.S. market for products produced at lower cost is the common stimulus for new investors. Mexico, for example, began to enjoy large increases in capital inflows long before NAFTA negotiations concluded. But economic policies must facilitate investment. Red tape and expensive regulatory hurdles discourage investors and erode their anticipated return. Most U.S. FTA partners have undertaken significant policy reforms to facilitate investment, well in advance of FTA negotiations.

The Moroccan government has made a number of regulatory changes to improve the country's investment climate in recent years. Foreign investment is permitted in all sectors except agricultural land; foreign investors are welcome in privatization projects; all performance requirements, such as local content or exported production, have been eliminated; and a special system of courts has been established to handle commercial disputes. To reduce red tape and regulatory approval requirements, Morocco has worked with the U.S. Agency for International Development (USAID) to establish a one-stop investment program and is working to establish regional investment centers to attract foreign investment in more rural locations. Morocco and the United States signed a Bilateral Investment Treaty in 1991.

In contrast, Jordan has relied on investment incentives, partly in the form of tax breaks, while streamlining investment procedures. With a few exceptions, the economy is open to foreign investment and foreigners are encouraged to participate in Jordan's privatization program. Because Jordan and the United States signed a state-of-the-art Bilateral Investment Treaty in 1997, investment provisions were not included in the U.S.–Jordan FTA. Jordan imposes no performance requirements, allows free transfer of funds, and provides for international arbitration of investment disputes. Jordan and Moroccan currencies are convertible with no restrictions on repatriation of profits or proceeds from sales of investments.

Anticipating Transition: Privatization, Competition, Price Controls, and Subsidies

Open markets increase competition for domestic producers, who, over time become more efficient and productive. In the meantime, policy reforms can minimize dislocations. These include privatization policies, elimination of price controls, and a proactive competition policy. Such policy direction may not be prominent in the provisions of an FTA but help ensure a flow of benefits from the agreement.

Jordan, Morocco, Chile, and a number of Central American countries early on launched aggressive privatization policies. Jordan reactivated its privatization program in 1998. Foreign companies now manage (with varying ownership shares) Jordan's telecommunications company, its cement factories, rail lines, and an energy generation facility. Morocco has embarked on an extensive privatization program, including telecommunications and concessions in energy and utilities. Over a 10-year period ending in 2001, Morocco sold 58 of 114 state enterprises, raising \$1.7 billion. Since the 1970s Chile has transferred hundreds of companies and public services to private operators, many with foreign capital participation. The privatization of telecommunications services has resulted in the most efficient telecommunications network in Latin America.

Jordan, Morocco, and Chile no longer administer prices, with a few exceptions, such as food staples in Morocco and some utilities in Chile. Morocco still subsidizes certain flour milling and oil pressing operations; these practices will be a subject of intense discussion during FTA negotiations. In 2001, a Law on Freedom of Prices and Competition went into effect in Morocco; in 2002, a Competition Council to enforce the law was established to enforce the law.

Campaigns to explain the new law to professional associations, chambers of commerce, and other organizations are underway.

Chile has long maintained a rigorous competition policy to promote economic efficiency and consumer welfare. The recently concluded U.S.–Singapore FTA requires that Singapore enact a law regulating anticompetitive business conduct and create a competition commission by 2005. Sometimes specific policies are necessary to minimize dislocations. Before the NAFTA came into effect Mexico embarked on its Procampo program for rural development. Highly regarded by the World Bank, the program entails land reform (including titling and new rights to sell land) and income supports in place of crop production incentives. Separate education programs complement Procampo. The aim of the programs was to prepare the rural economy to produce more efficiently as the NAFTA gradually reduced border protection and to prepare farm workers to seek opportunities in industrial production. The Mexican economy would benefit overall from lower food costs. As NAFTA tariff reductions continue to take effect, the Mexican economy has benefited but some rural districts have felt pressures. Consequently, Mexico has on occasion availed itself of the NAFTA’s short-term safeguard provisions, but the agreement’s agriculture provisions have not been renegotiated. Chile is exploring similar adjustment programs for its rural economy, primarily for its wheat farmers, in the face of FTAs with the United States and Canada. The negotiations of a U.S.–Morocco FTA and negotiations to enlarge the scope of the EU-Morocco Association Agreement are catalysts for Moroccan agricultural policy reforms that the new administration is committed to pursue.

FTAs and Innovative Reforms

The United States’ FTAs have introduced and required unique trade policy actions. Unlike the General Agreement on Trade in Services (GATS), the NAFTA, Chile, and Singapore agreements incorporate a “negative list” of service sectors exempt from general market-opening principles rather than a “positive list” of services subject to market-opening principles. This arrangement ensures market access for new or innovative service sectors that emerge after an agreement is signed. The negative list approach increases the burden on negotiators to coordinate closely with federal and sub-federal regulators of service to review and determine whether derogations are necessary and at what negotiating price. Experience with Mexico and Canada has shown that involving trade authorities with domestic regulators has tended to broaden regulatory decision-making, making it more accountable and transparent.

The texts of the Jordan, Singapore, and Chile FTAs contain provisions on e-commerce. Many goods and services can now be delivered digitally, and these agreements ensure that they face no discrimination based on means of delivery. Related services provisions provide for liberalization of small package delivery services. These e-commerce obligations often require better cooperation and coordination among government regulators dealing with customs, telecommunications, and transportation.

Labor and environment commitments have been an important part of U.S. FTAs since NAFTA. The texts of the Jordan, Singapore, and Chile agreements incorporate labor and environment provisions and subject related obligations to the same binding dispute settlement as trade obligations. The provisions commit the parties to effective enforcement of labor and environmental laws and require them not to reduce protections to promote trade or investment. Though no explicit “readiness” criteria are applied to potential free trade partners, the United States expects partners to have pre-existing regimes strongly protecting workers’ rights and

safety and the environment. Prior to NAFTA, Mexico had excellent laws and regulations protecting workers and the environment, but enforcement was often poor because of poorly trained inspectors and lack of funds. The NAFTA focused attention on these problems and cooperative programs between the United States and Mexico have begun to address deficiencies. Similarly in Central America, the United States has long offered bilateral assistance to guide the drafting of labor laws and regulations and to train workplace safety inspectors. In recent years, from a hub in San Jose, the United States has begun similar regional assistance on environmental protection and regulatory enforcement. Jordan had an excellent legal framework for labor law as FTA negotiations began. Jordan's environmental officials, however, used the negotiating process to identify environmental shortfalls and to design a long-term bilateral assistance program to prepare them to implement the agreement's environmental provisions. Morocco has a highly dedicated environmental protection team. Because relevant laws and regulations are just now coming into effect, Moroccan officials envision using the negotiating process in a similar manner. Labor law reform is high priority of the new Moroccan administration, and Morocco is addressing the problem of child labor with a royal initiative and the support of the International Labor Organization (ILO) and international donors.

Pre-Negotiation Policy Reform Components

- **Market access.** Jordan, Morocco, Singapore, Chile, and the Central American countries significantly reduced their MFN tariffs before beginning FTA negotiations with the United States. Jordan and Morocco eliminated most taxes and fees on imports as well.
- **WTO Compliance.** Jordan's accession to the WTO preceded its FTA with the United States. Its vigorous implementation of WTO obligations is a critical sign of its commitment to reform.
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- ***Privatization.*** Countries that entered FTAs with the United States had implemented aggressive privatization programs. In Jordan, foreign companies now manage (with varying ownership shares) Jordan's telecommunications company, its cement factories, rail lines and an energy generation facility. Morocco's extensive privatization process included such critical sectors as telecommunications, energy, and utilities.
- ***Price Controls.*** Jordan, Morocco, and Chile no longer administer prices, with a few exceptions such as food staples in Morocco and some utilities in Chile.
- ***Competition Policy.*** Chile has a rigorous competition policy to promote economic efficiency and consumer welfare. In addition, the U.S.–Singapore FTA requires that Singapore enact a law regulating anticompetitive business conduct and to create a competition commission by 2005.
- ***Rural Development.*** To minimize dislocations in rural areas following NAFTA, Mexico embarked on a rural development program that included land reform, income support in place of production incentives, and training programs to help the rural economy produce more efficiently.
- ***Labor and Environment.*** Most U.S. FTA partners already had regimes strongly protecting workers' rights and safety and the environment. Before NAFTA Mexico had excellent laws and regulations protecting workers and the environment, though enforcement was often poor. Labor law reform is high priority of the new Moroccan administration, and Morocco is addressing the problem of child labor.